

- (1) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code section 82048; Cal. Code Regs., tit. 2, § 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act.
- (2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See Cal. Code Regs., tit. 2, § 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.
- (3) Identify the public official's economic interests. (See Cal. Code Regs., tit. 2, § 18703.)
- (4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See Cal. Code Regs., tit. 2, § 18704.)
- (5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See Cal. Code Regs., tit. 2, § 18705.)
- (6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See Cal. Code Regs., tit. 2, § 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act.
- (7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the reasonably foreseeable material financial effect on the public official's economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See Cal. Code Regs., tit. 2, § 18707.)
- (8) Determine if the public official's participation is legally required despite the conflict of interest. (See Cal. Code Regs., tit. 2, § 18708.)

§ 18701.

(a) For purposes of Government Code Section 82048, which defines "public official," and Government Code Section 82019, which defines "designated employee," the following definitions apply:

- (1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. A committee, board or commission possesses decisionmaking authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(C) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302.

(b) For purposes of Government Code Section 87200, the following definitions apply:

(1) "Other public officials who manage public investments" means:

(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial

managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B) above.

(2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(4) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

§ 18702.

(a) To determine if a public official is making, participating in making, or using or attempting to use his/her official position to influence a government decision, apply Title 2, California Code of Regulations, 2 Cal. Code Regs. sections 18702.1 through 18702.4, respectively.

(b) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)–(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

§ 18702.1.

(a) A public official "makes a governmental decision," except as provided in Title 2, California Code of Regulations, section 18702.4, 2 Cal. Code Regs. section 18702.4, when the official, acting within the authority of his or her office or position:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or (a)(4), above, unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

(c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1) – (a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

§ 18702.2.

A public official "participates in making a governmental decision," except as provided in Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his or her position, the official:

(a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A):

(b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

(1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or

(2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).

§ 18702.3.

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence,

any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

§ 18702.4.

(a) Making or participating in making a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual, or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Title 2, California Code of Regulations, section 18702.4(b)(1); or

(3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are "consultants," as defined in Title 2, California Code of Regulations, section 18701(a)(2), this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.

(b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

(2) Communicates with the general public or the press.

(3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner.

(c) Academic Decisions

(1) Except as provided in subsection (c)(2), neither disclosure of financial interests nor disqualification is required under Government Code sections 87100, 87302, or any Conflict of Interest Code, in connection with:

(A) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;

(B) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (c)(1)(B) shall not apply with respect to any decision made by the person in the exercise of institution- or campus-wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.

(2) Disclosure shall be required under Government Code section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required under Government Code sections 87100, 87302 or any Conflict of Interest Code in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

§ 18702.5.

(a) Government Code section 87105 and this regulation apply when a public official who holds an office specified in Government Code section 87200 has a financial interest in a decision within the meaning of Government Code section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.).

(b) Content & Timing of Identification: The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:

(1) The public official shall publicly identify:

(A) Each type of economic interest held by the public official which is involved in the decision (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and

(B) The following details identifying the economic interest(s):

(i) if an investment, the name of the business entity in which each investment is held;

(ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(iv) if income or gifts, then identification of the source; and

(v) if personal financial effect, then identification of the expense, liability, asset or income affected.

(2) Form of Identification: If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.

(3) Recusal/Leaving the Room: The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of this regulation is made. He or she shall not be counted toward achieving a quorum while the item is discussed.

(c) Special Rules for Closed Session: If the governmental decision is made during a closed session of a public meeting, the public identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code section 87100. The declaration shall be made part of the official public record. The public official shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) Exceptions:

(1) Uncontested Matters: The exception from leaving the room granted in Government Code section 87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for uncontested matters" shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(2) Absence: If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, then Government Code section 87105 and this regulation impose no public identification duties on the public official for that item at that meeting.

(3) Speaking as a Member of the Public Regarding an Applicable Personal Interest: When a personal interest found in 2 Cal. Code Regs. section 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public.

§ 18703.

For purposes of Title 2, Division 6, Chapter 7 of the California Code of Regulations, the term "economic interest" includes the interests defined in Title 2, California Code of Regulations, sections 18703.1 through 18703.5, inclusive.

§ 18703.1.

A public official has an economic interest in a business entity if any of the following are true:

(a) The public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more in the business entity.

(b) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.

(c) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code section 87103(a), (c) or (d).

(d) Parent, Subsidiary, Otherwise Related Business Entity, defined.

(1) Parent subsidiary. A parent subsidiary relationship exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

(2) Otherwise related business entity. Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not have a parent subsidiary relationship are otherwise related if any one of the following three tests is met:

(A) One business entity has a controlling ownership interest in the other business entity.

(B) There is shared management and control between the entities. In determining whether there is shared management and control, consideration should be given to the following factors:

(i) The same person or substantially the same person owns and manages the two entities;

(ii) There are common or commingled funds or assets;

(iii) The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis;

(iv) There is otherwise a regular and close working relationship between the entities; or

(C) A controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

(3) Disclosure of investment interests. An official who holds a reportable investment in one business entity need not disclose the name of any parent, subsidiary or otherwise related business entity on his or her Statement of Economic Interests.

(e) Although a public official may not have an economic interest in a given business entity pursuant to subdivisions (a)-(c) of this section, the public official may nonetheless have an economic interest in the business entity if it is a source of income to him or her. (See 2 Cal. Code Regs. section 18703.3.)

§ 18703.2.

(a) A public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in fair market value.

§ 18703.3.

(a) A public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$500) within 12 months prior to the time when the relevant governmental decision is made. For purposes of Government Code sections 87100 and 87103(c), a public official's income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income.

(b) Former employers. Source of income, as used in Government Code section 87103(c) and this section, shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.

(c) Sources of Commission Income to Brokers, Agents and Salespersons

(1) "Commission income" means gross payments received by a public official as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.

(2) The sources of commission income in a specific sale or similar transaction include for each of the following:

(A) An insurance broker or agent:

(i) The insurance company providing the policy;

(ii) The person purchasing the policy; and

(iii) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.

(B) A real estate broker:

(i) The person the broker represents in the transaction;

(ii) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(iii) Any brokerage business entity through which the broker conducts business; and

(iv) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(C) A real estate agent:

(i) The broker and brokerage business entity under whose auspices the agent works;

(ii) The person the agent represents in the transaction; and

(iii) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(D) A travel agent or salesperson:

(i) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;

(ii) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and

(iii) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.

(E) A stockbroker:

(i) The brokerage business entity through which the broker conducts business; and

(ii) The person who trades the stocks, bonds, securities or other investments through the stockbroker.

(F) A retail or wholesale salesperson:

(i) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and

(ii) The person who purchases the product or service.

(3) For purposes of determining whether disqualification is required under the provisions of Government Code sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

(d) Sources of Incentive Compensation. "Incentive compensation" means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services which are not marketing or sales.

The purchaser is a source of income to the official if all three of the following apply:

(1) The official's employment responsibilities include directing sales or marketing activity toward the purchaser; and

(2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and

(3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

§ 18703.4.

A public official has an economic interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred forty dollars (\$340) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

§ 18703.5.

A public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.

§ 18704.

(a) In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision:

(1) For governmental decisions which affect business entities, sources of income, and sources of gifts--apply Title 2, California Code of Regulations, section 18704.1;

(2) For governmental decisions which affect real property interests--apply Title 2, California Code of Regulations, section 18704.2.

(3) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his or her immediate family (personal financial effect)--apply Title 2, California Code of Regulations, section 18704.5.

§ 18704.1.

(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

(b) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(b), section 18705.3(a), or section 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(c), section 18705.3(b), or section 18705.4(b), respectively.

§ 18704.2.

(a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:

(1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.

(3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.

(4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.

(5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.

(b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is indirectly involved if:

(1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under Title 2, California Code of Regulations, section 18705.2(b).

(2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(c) Determining the applicable materiality standard.

(1) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in Title 2, California Code of Regulations, section 18705.2(a).

(2) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in Title 2, California Code of Regulations, section 18705.2(b).

§ 18704.5.

(a) A public official or his or her immediate family is deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family.

§ 18705.

(a) In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material:

(1) For governmental decisions which affect economic interests in business entities -apply Title 2, California Code of Regulations, section 18705.1;

(2) For governmental decisions which affect economic interests in real property-apply Title 2, California Code of Regulations, section 18705.2;

(3) For governmental decisions which affect economic interests in sources of income-apply Title 2, California Code of Regulations, section 18705.3;

(4) For governmental decisions which affect economic interests in sources of gifts -apply Title 2, California Code of Regulations, section 18705.4;

(5) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his immediate family (personal financial effect)-apply Title 2, California Code of Regulations, section 18705.5;

(b) General Rule.

(1) Whenever the specific provisions of Title 2, California Code of Regulations, sections 18705.1 through 18705.5, inclusive, cannot be applied, the following general rule shall apply: The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.

(c) Special Rules. Notwithstanding Title 2, California Code of Regulations, sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if:

(1) Although a conflict of interest would otherwise exist under Title 2, California Code of Regulations, sections 18705.1 through 18705.4, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

§ 18705.1.

(a) Introduction.

(1) If a business entity in which a public official has an economic interest is directly involved in a governmental decision (see 2 Cal. Code Regs., section 18704.1(a)), use the standards in subdivision (b) of this regulation.

(2) If a business entity in which a public official has an economic interest is indirectly involved in a governmental decision (see 2 Cal. Code Regs., section 18704.1(b)), use the standards in subdivision (c) of this regulation.

(b) Directly involved business entities.

(1) General Rule: Unless the exception in subdivision (b)(2) of this regulation applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.

(2) Exception: If the public official's only economic interest in the business entity is an investment interest (see Government Code section 87103(a)), and the public official's investment in the business entity is worth \$25,000 or less, then apply the materiality standards in subdivision (c)(1) of this regulation if the business entity is listed on the Fortune 500, or the materiality standards in subdivision (c)(2) of this regulation if the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than:

(A) \$2.5 million, or

(B) such other amount described at Rule 102.01C of the New York Stock Exchange's Listed Company Manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing).

(c) Indirectly involved business entities. The following materiality standards apply when a business entity in which a public official has an economic interest is indirectly involved in a governmental decision. If more than one of the following subdivisions is applicable to the business entity in question, apply the subdivision with the highest dollar thresholds.

(1) If the business entity is listed in the Fortune 500, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year of \$10,000,000 or more; or

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or

(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$10,000,000 or more.

(2) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than \$2.5 million, or such other amount described at Rule 102.01C of the New York Stock Exchange's Listed Company Manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$200,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$500,000 or more.

(3) If the business entity is listed on either the NASDAQ or American Stock Exchange, or if not so listed, for its most recent fiscal year had: net income of no less than \$500,000 (or such other amount described in the minimum financial requirements for continued listing on the NASDAQ SmallCap market), or earnings before taxes of no less than \$750,000 (or such other amount of earnings before taxes described under initial listing standard I of Section 101(a) of the Rules of the American Stock Exchange, or any superseding Section of the Rules of that Exchange), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$300,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$300,000 or more.

(4) If the business entity is not covered by subdivisions (c)(1)-(3), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.

(d) Terminology. The accounting terms described below are the same as, or not inconsistent with, terms used in Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Nothing in this subdivision should be construed to incorporate new items not contemplated under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, nor to exclude any items that might be included in the definitions of these terms under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.

(1) Assets. As used in this section, "assets" means all property, real and personal, tangible and intangible, which belongs to any business entity. This includes, but is not limited to, cash, securities, merchandise, raw materials, finished goods, operating supplies, and ordinary maintenance material and parts, accounts receivable and notes and loans receivable, and prepaid expenses (such as prepaid insurance, interests, rents, taxes, advertising, and operating supplies).

(A) When a business entity holds a claim over collateral (including real property) as security for a loan made by the business entity, such a claim does not make the collateral (including real property) an "asset" of the business entity, unless the business entity has initiated proceedings to foreclose upon, or acquire the asset based on the debtor's failure to repay the loan. The loan or note secured by the collateral is an asset.

(B) The definition of "assets" also includes intangible assets. Intangible assets, include, but are not limited to, long-lived legal rights and competitive advantages developed or acquired by a business enterprise, patents, copyrights, franchises, trademarks, organizational costs, goodwill, and secret processes.

(2) Earnings Before Taxes: Revenue, less the cost of goods sold and selling, general, and administrative expenses (but not excluding depreciation and amortization expenses); otherwise defined as operating and non-operating profit before the deduction of income taxes. Described variously as EBT, Income Before Income Taxes, or Income Before Provision for Income Taxes.

(3) Expenses: In general, the term refers to the current costs of carrying on an activity.

(4) Gross Revenue: Actual or expected inflows of cash or other assets. "Gross Revenue" is the revenue of a business entity before adjustments or deductions are made for returns and allowances and the costs of goods sold, and prior to any deduction for these and any other expenses.

(5) Liabilities: Obligations of the business entity, liquidation of which is reasonably expected to require the transfer of assets or the creation of other new liabilities. Any financial obligation or cash

expenditures that must be made by the business entity at a specific time to satisfy the contractual terms of such an obligation.

(6) Net Income: A business entity's total earnings; otherwise defined as revenues adjusted for the costs of doing business, depreciation, interest, taxes, and other expenses. This amount is usually found at the bottom of a business entity's Profit and Loss statement. Also described as Net Profit.

(e) Financial statements. In complying with this regulation, public officials may rely on the most recent independently audited financial statements of the business entity so long as those statements are reflective of the current condition of the business entity. Financial statements are not considered "reflective of the current condition of the business entity" where:

(1) The most recent independently audited financial statements of the business entity are for a fiscal year ending more than twenty-four months prior to the date of the governmental decision.

(2) The most recent audit of the financial statements resulted in an adverse opinion, was issued with a disclaimer, or was otherwise qualified in such a manner that the statement of assets, liabilities, expenses, or gross revenues is questioned in the audit report, or

(3) There has been a subsequent event, intervening between the date that the financial statement was created and the date of the decision of the public official, that makes the statement no longer representative, including, but not limited to, business reorganizations.

§ 18705.3.

(a) Directly involved sources of income. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.

(b) Indirectly involved sources of income.

(1) Sources of income which are business entities. If the source of income is a business entity, apply the materiality standards stated in Title 2, California Code of Regulations, section 18705.1(c).

(2) Sources of income which are non-profit entities, including governmental entities. The effect of a decision is material as to a nonprofit entity which is a source of income to the official if any of the following applies:

(A) For an entity whose gross annual receipts are \$400,000.000 or more, the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$1,000,000 or more; or

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$250,000 or more; or

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$1,000,000 or more.

(B) For an entity whose gross annual receipts are more than \$100,000,000 but less than \$400,000,000, the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$400,000 or more; or

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$100,000 or more; or

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$400,000 or more.

(C) For an entity whose gross annual receipts are more than \$10,000,000, but less than or equal to \$100,000,000 the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$200,000 or more.

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$50,000 or more.

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$200,000 or more.

(D) For an entity whose gross annual receipts are more than \$1,000,000, but less than or equal to \$10,000,000 the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$100,000 or more.

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$25,000 or more.

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$100,000 or more.

(E) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.

(F) For an entity whose gross annual receipts are \$100,000 or less, the effect of the decision will be any of the following:

(i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more.

(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.

(iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$10,000 or more.

(3) Sources of income who are individuals. The effect of a decision is material as to an individual who is a source of income to an official if any of the following applies:

(A) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(B) The decision will affect the individual's real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b).

(c) Nexus. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.

§ 18705.4.

(a) Directly involved sources of gifts. Any reasonably foreseeable financial effect on a person who is a source of a gift to a public official, and which person is directly involved in a decision before the official's agency, is deemed material.

(b) Indirectly involved sources of gifts.

(1) Sources of gifts which are indirectly involved business entities. If the source of a gift is a business entity, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.1(c).

(2) Sources of gifts which are indirectly involved nonprofit entities or government agencies. If the source of a gift is a nonprofit entity or a government agency, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(2).

(3) Sources of gifts who are indirectly involved individuals. If the source of a gift is an individual, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(3).

§ 18705.5.

(a) A reasonably foreseeable financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.

(b) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.

§ 18706.

(a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§ 18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.

(b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:

- (1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
- (2) The market share held by the official or the official's source of income in the jurisdiction;
- (3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;
- (4) The scope of the governmental decision in question; and
- (5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

(c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.

§ 18707.

(a) Introduction.

Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the governmental decision affects the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in Title 2, California Code of Regulations, sections 18707.1 - 18707.9.

(b) Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:

(1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.

(2) Step Two: For each person or real property identified in Step One, determine the applicable "significant segment" rule according to the provisions of Title 2, California Code of Regulations, section 18707.1(b).

(3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in Title 2, California Code of Regulations, section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

(4) Step Four: Following the provisions of Title 2, California Code of Regulations, section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in Title 2, California Code of Regulations, sections 18707.2 through 18707.9 applies to each person or real property triggering the conflict of interest.

(c) For purposes of Government Code section 87102.5 (Members of the Legislature) and Government Code section 87102.8 (elected state officers), Government Code section 87102.6(b)(2) applies.

§ 18707.1.

(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a "significant segment" of the public generally if any of the following are affected as set forth below:

(A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

(i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 individuals who are residents of the jurisdiction.

(B) Real Property. For decisions that affect a public official's real property interest, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency.

(C) Business Entities. For decisions that affect a business entity in which a public official has an economic interest the decision also affects 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

(D) Governmental Entities. For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.

(E) Exceptional Circumstances. The decision will affect a segment of the population which does not meet any of the standards in subdivisions (b)(1)(A) through (b)(1)(D), however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally.

(2) Substantially the Same Manner: The governmental decision will affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation.

§ 18707.2.

The financial effect of a governmental decision on the official's economic interest is indistinguishable from the decision's effect on the public generally if any of the following apply:

(a) The decision is to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions which are applied on a proportional basis on the official's economic interest and on a significant segment of the jurisdiction, as defined in 2 Cal. Code of Regulations, section 18707.1(b).

(b) The decision is made by the governing board of a landowner voting district and affects the official's economic interests and ten percent of the landowners or water users subject to the jurisdiction of the district in proportion to their real property interests or by the same percentage or on an "across-the-board" basis for all classes.

(c) The decision is made by the governing board of a water, irrigation, or similar district to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions, such as the allocation of services, which are applied on a proportional or "across-the-board" basis on the official's economic interests and ten percent of the property owners or other persons receiving services from the official's agency.

§ 18707.3.

(a) The effect of a governmental decision on the principal residence of a public official is not distinguishable from the effect on the public generally where all of the following conditions are met:

(1) The public official's agency has jurisdiction over a population of 25,000 or less.

(2) The decision does not have a direct effect (as provided in Title 2, California Code of Regulations, section 18704.2) on the real property that serves as the public official's principal residence.

(3) The real property that serves as the public official's principal residence is more than 500 feet from the boundaries of the property which is the subject of the decision.

(4) There are at least 100 properties under separate ownership which are within a 2,500 foot radius of the boundaries of the property which is the subject of the decision.

(5) The principal residence is located on a parcel of land not more than one acre in size, or which, under the zoning and subdivision regulations of the jurisdiction in which it is located, cannot be further subdivided.

(6) The effect of the decision on the official's real property interest will be substantially the same as the effect of the decision on the majority of the residential properties which are beyond 500 feet, but within 2,500 feet of the boundaries of the real property that is the subject of the decision.

(b) For purposes of this regulation, "principal residence" means the domicile of a person, in which the person's habitation is fixed, wherein the person has the intention of remaining, and to which the person, whenever he or she is absent, has the intention of returning. At any given time, a person may have only one principal residence. With respect to units in condominium complexes, planned unit developments, and similar residences, "the real property that serves as the public official's principal residence" and "principal residence," as used in this regulation, means the unit or space in which the official has a separate ownership interest.

§ 18707.4.

(a) For the purposes of Government Code section 87103, the "public generally" exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:

(1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

(2) The member is required to have the economic interest the member represents.

(3) The board's or commission's decision does not have a reasonably foreseeable material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.

(4) The decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent. For purposes of this regulation, a significant segment constitutes fifty percent of the persons the member was appointed to represent.

(b) In the absence of an express finding and declaration or requirement of the types described in 2 Cal. Code Regs. section 18707.4(a)(1) and (2), the "public generally" exception only applies if such a finding and declaration or requirement is implicit, taking into account the language of the statute, ordinance, or other provision of law creating or authorizing the creation of the board or commission, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

§ 18707.5.

(a) Significant Segment Test

(a)(1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the retail customers of a business entity constitute a significant segment of the public generally if either of the following is true: apply:

(1)(A) The retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction; or

(2)(B) The retail customers of the business entity during the preceding 12 months number at least ten thousand 10,000.

(2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the retail customers constitute a significant segment of the public generally if the retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction.

(3) For purposes of this subdivision, a customer of a retail business entity is each separate and distinct purchaser of goods or services, whether an individual, household, business or other entity. If records are not maintained by customer name, a good faith estimate shall be made to determine what percentage of sales transactions represent multiple transactions by repeat customers. The total number of sales transactions shall then be reduced by the estimated percentage of repeat customers to yield the number of customers for purposes of applying this subdivision.

(b) Indistinguishable Income Test

(b)(1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the amount of income received by a business entity from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question during the preceding 12 months is less than one-tenth of 1 percent of the gross sales revenues of the retail business entity for the preceding fiscal year, is less than one-tenth of one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

(2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question does not exceed one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

(c) For purposes of Government Code section 87100, an official who owns 10 percent or more of a retail business entity, which meets whose retail customers meet the criteria in either subdivision (a)(1)(A), or (a)(2)(1)(B) or (a)(2), does not "have reason to know" that a decision will affect a source of income to the retail business entity when either of the following applies:

(1) If all of the following are true:

- (A) The customer does not have a charge account or open book account with the retail business;
- (B) The retail business does not maintain records for noncharge customer transactions by customer name or other method for tracking transactions which would provide the customer name; and
- (C) The fact that the person is a customer is not personally known to the official; or

(2) If all of the following are true:

- (A) The accounts and books of the retail business entity are maintained by someone other than the official or a member of the official's immediate family; and
- (B) The fact that the person is a customer is not personally known to the official.

(d) For purposes of subdivision (c), a credit card transaction utilizing a credit card not issued by the retail business entity is considered a "noncharge customer transaction."

(e) Subdivision (c) shall not be utilized in determining whether an official "knows" of a financial interest in a decision within the meaning of Government Code section 87100. When such knowledge exists, or the fact that a person is a source of income is brought to the attention of the official prior to the governmental decision, the provisions of subdivision (c) shall have no effect on the official's duty to disqualify.

§ 18707.6.

Notwithstanding Title 2, California Code of Regulations, sections 18707 through 18707.5, inclusive, the financial effect of a governmental decision on an official is indistinguishable from its financial effect on the public generally if both of the following apply:

(a) The decision will affect an economic interest of the official, other than an economic interest as defined in section 87103(e), in substantially the same manner as other persons subject to a state of emergency, proclaimed by the Governor pursuant to Government Code section 8625, or proclaimed by the governing body of a city or county.

(b) The decision is required to mitigate against the effects directly arising out of the emergency, and strict adherence to the Act will prevent, hinder, or delay the mitigation of the effects of the emergency.

§ 18707.7.

Where a decision will affect an industry, trade, or profession in substantially the same manner as the decision will affect an official's economic interest, the industry, trade, or profession constitutes a "significant segment" of the jurisdiction only as set forth below:

(a) In the case of an elected state officer, an industry, trade, or profession constitutes a significant segment of the public generally, as set forth in section 87102.6 of the Government Code.

(b) In the case of any other official, an industry, trade, or profession constitutes a significant segment of the public generally if that industry, trade, or profession is a predominant industry, trade, or profession in the official's jurisdiction or in the district represented by the official. An industry, trade, or profession that constitutes fifty percent or more of business entities in the jurisdiction of the official's agency or the district the official represents is a "predominant" industry, trade, or profession for purposes of this regulation. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

§ 18707.9.

(a) The effect of a governmental decision on a public official's real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units.

A public official's principal residence, as defined in Title 2, California Code of Regulations, section 18707.3(b), does not count as a unit for purposes of this subdivision.

(b) The effect of a governmental decision on any of a public official's economic interest (including real property and business interests) is indistinguishable from the effect on the public generally if all of the following apply:

- (1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;
- (2) No economic interest of the public official other than one created by ownership of residential real property, or the rental of that property, is analyzed under this regulation;
- (3) The official's economic interests are not directly involved in the decision (as provided in Title 2, California Code of Regulations, sections 18704.1, 18704.2(a), and 18705.1);
- (4) The decision affects at least ten percent of the residential property units in the jurisdiction of the public official or district he or she represents; and
- (5) The decision will affect the official's economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property. A public official will be affected in substantially the same manner for purposes of this subdivision if the decision will be applied on a proportional or "across-the-board" basis on the official's economic interests as on other residential property owners or other owners of residential rental property affected by the decision.

§ 18708.

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:

(1) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this regulation shall be satisfied if the official discloses:

(A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;

(B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the

location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact.

For income, loans or gifts, the official shall disclose the person or entity that is the source.

(2) The public official or another officer or employee of the agency shall give a summary description of the circumstances under which he or she believes the conflict may arise.

(3) Either the public official or another officer or employee of the agency shall disclose the legal basis for concluding that there is no alternative source of decision.

(4) The disclosures required by this regulation shall be made in the following manner:

(A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

(B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

(C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code section 87100, whether or not such other members are actually present at the time of the disqualification.

(3) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.

(d) For purposes of this section, a "quorum" shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the "quorum" shall be that minimum number of members needed for that adoption.

APPENDIX D

Government Code Sections 89501, 89502, 89503, and 89506

§ 89501.

(a) For purposes of this chapter, "honorarium" means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(b) The term "honorarium" does not include:

(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The commission shall adopt regulations to implement this subdivision.

(2) Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the State Controller for donation to the General Fund, or in the case of a public official for local government agency, delivered to his or her agency for donation to an equivalent fund, without being claimed as a deduction from income for tax purposes.

(c) Section 89506 shall apply to all payments, advances, or reimbursements for travel and related lodging and subsistence.

§ 89502.

(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election after the person has terminated his or her